



California Fair Political Practices Commission

October 28, 1987

Maurice E. Huguet, Jr.
Turner, Huguet & Barnes
P.O. Box 110
Martinez, California 95804

Re: Your Request for Advice
Our File No. I-87-245

Dear Mr. Huguet:

You have requested advice on behalf of Clayton city mayor James Parsons about the application of the conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to Mayor Parsons. We are treating your request as one for informal assistance because we do not have enough facts about the sources of income to Mayor Parsons to advise him with certainty.^{2/}

QUESTIONS

1. Is Mayor Parsons disqualified from participating in decisions that concern Pacific Rim, a source of income to Mayor Parsons' engineering firm?

2. Is Mayor Parsons disqualified from representing Pacific Rim and other developers before the city council, city staff and the planning commission?

3. May members of Mayor Parsons' civil engineering firm represent Pacific Rim and other developers that contract with the firm in proceedings before city agencies?

CONCLUSION

1. Mayor Parsons is disqualified from participating in decisions before the city council and the redevelopment agency,

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

which will have a reasonably foreseeable material financial effect on a source of income to the mayor.

2. If Pacific Rim and other developers are sources of income to Mayor Parsons, he may not represent them before city staff and the planning commission.

3. Other members of Mayor Parsons' firm may represent Pacific Rim and other developers before city agencies.

FACTS

Clayton's mayor James Parsons is a civil engineer and a one-third partner in a civil engineering firm. Mayor Parsons also is the chairman of the redevelopment agency.

Pacific Rim is a company that plans to develop property now zoned for commercial use, which the city of Clayton soon will annex. This property is situated within the redevelopment agency's boundaries. To develop the property, Pacific Rim will have to get the city staff and the planning commission to approve the project. A planning commission decision may be appealed to the city council. The members of the redevelopment agency are not expected to consider any transaction involving this property.

Pacific Rim wants to hire Mayor Parson's firm for engineering services, such as studies of surface drainage, grading, and the placement of utilities. Mayor Parsons' firm will not represent Pacific Rim in its application for a use permit or in design review proceedings.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way using his or her official position to influence a governmental decision in which he or she has a financial interest.

Mayor Parsons is a public official. (Sections 82048 and 87200.) If Pacific Rim contracts with, promises or pays \$750 or more to the mayor's firm, the company would be a source of income of \$250 or more to Mayor Parsons. (Sections 82030(a) and 87103(c).) Should Mayor Parsons have such an economic interest in Pacific Rim or any other developer, Mayor Parsons would be disqualified from participating in a decision that would have a reasonably foreseeable material financial effect on Pacific Rim or the other developer while the income is promised and for twelve months after his firm's receipt of the income. (Sections 87100 and 87103(c).)

Foreseeability

An effect is reasonably foreseeable if there is a substantial likelihood it will occur. Certainty is not required. Nevertheless, if an effect were a mere possibility, it would not be not foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

In your letter, you wrote that Pacific Rim will need to get planning approval from the city. The effects of such decisions on Pacific Rim are reasonably foreseeable.

Material Financial Effect

Regulation 18702.1 (a)(1) (copy enclosed) requires that Mayor Parsons be disqualified if Pacific Rim appears before the city council or the redevelopment agency. Pacific Rim appears before an agency if it is a named party to the proceeding or initiates the proceeding by filing an application, claim, appeal or similar request. (Regulation 18702.1(b).) ✓

In addition, the decision's effect on the source of income would be material if the business entity were affected according to a factor outlined in Regulation 18702.2 (copy enclosed).

The regulation gives guidelines on how to measure the significance of a decision based on the financial size of the company. First, the financial size of the company is determined based on whether the company is traded on the New York or American Stock Exchange, or listed on the NASDAQ over-the-counter (OTC) market, or is qualified for sale in California, or has a certain amount of net tangible assets. Second, the decision's effect on the company's gross revenues, expenses, assets or liabilities is determined.

To determine if a decision would have a material effect on Pacific Rim or another developer, Mayor Parsons would have to know the financial size of the firm and evaluate the effect of a decision in accord with the provisions of Regulation 18702.2. We have not found Pacific Rim listed on the New or American Stock Exchange nor the NASDAQ OTC market. Consequently, the provisions of subsections (e), (f) or (g) would apply to Pacific Rim.

Making, Participating In and Influencing Decisions

Mayor Parsons may not make, participate in or attempt to influence a decision before the city council or the

Maurice E. Huguet, Jr.
October 28, 1987
Page 4

redevelopment agency if the decision would have a significant financial effect on Pacific Rim. The mayor makes a decision if he votes on a matter, appoints a person, commits the city council or the redevelopment agency to a course of action, enters into a contract on behalf of either body or decides not to do any of the preceding, except for disqualifying himself because of a financial interest. (Regulation 18700(b), copy enclosed.)

The mayor "participates" in a decision" if he negotiates with a private person about the decision and advises or makes recommendations, without significant intervening substantive review, to the city council or redevelopment agency. (Regulation 18700(c)(2).)

Furthermore, Mayor Parsons may not use his official position to attempt to influence a decision by contacting a city employee or appearing before a city agency on behalf of a business entity, client, or customer. (See Kennedy Advice Letter No. I-86-026 and Regulation 18700.1(a), copies enclosed.)

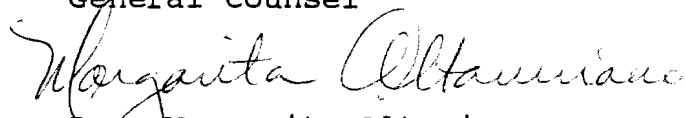
But, Mayor Parsons may have "necessary contact with agency staff concerning the processing or evaluation of the drawings or submissions," which he personally has prepared. (Regulation 18700.1(b)(4).)

The Act, however, does not prohibit the mayor's engineering firm from representing Pacific Rim and other developers at the city staff, planning commission, and city council levels. Nevertheless, keep in mind that Mayor Parsons is disqualified if the decision foreseeably and materially would affect a source of income of \$250 or more.

I would be glad to answer any question you have about this letter. Please call me at (916) 322-5901 if you have a question.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

MA:jaj
Enclosures

TURNER, HUGUET & BRANS
ATTORNEYS AT LAW
924 MAIN STREET
P. O. BOX 110
MARTINEZ, CALIFORNIA 94553
(415) 228-3433

GORDON B. TURNER
MAURICE E. HUGUET, JR.
KENNETH R. BRANS

September 22, 1987

Diane Griffiths
General Counsel
F.P.P.C.
P. O. Box 807
Sacramento, CA 95804

Re: Request for Conflict of Interest Advice Letter

Dear Ms. Griffiths:

As the Clayton City Attorney I am submitting the following facts at the request of Mayor James Parsons, Clayton City Offices, P. O. Box 280, Clayton, CA 94517, and seeking your advice as to whether he has a potential conflict of interest.

Mayor Parsons is a civil engineer and owner of a 1/3 partnership interest in a general civil engineering firm.

It is contemplated that Mayor Parsons' firm would perform civil engineering services relating to site development, i.e., surface drainage, grading, and utility placement for Pacific Rim, a company planning to purchase and develop property soon to be annexed to the City, which is shown as commercial on the City's General Plan.

The property in question would also be situated within the boundaries of the City's Redevelopment Agency which Mayor Parsons chairs. There are currently no transactions anticipated between Pacific Rim and the Redevelopment Agency.

Pacific Rim will need various specific project approvals from either the City staff or Planning Commission, but in general not from the City Council unless an appeal is taken to that level.

Mayor Parsons' firm will not be involved in the application process for use permits or design review on behalf of Pacific Rim, but will limit its work to the aforementioned site development civil engineering.

Diane Griffiths
General Counsel
September 22, 1987
Page 2.

Based upon the foregoing facts, would the Mayor have a conflict of interest if Pacific Rim matters should come before the Council, and if so, would his voluntary disqualification in considering such matters be sufficient? Likewise, would he have to disqualify himself from any activities of the Redevelopment Agency pertaining to the Pacific Rim property?

Would the Mayor or his firm be disqualified from representing Pacific Rim, or for that matter, other developers at the staff and planning commission levels only excluding, of course, any appearances before the City Council.

Thank you for your assistance in this matter.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Maurice E. Huguet, Jr.", is written over the typed name.

Maurice E. Huguet, Jr.

MEH:dg
0856h
cc: Mr. James Parsons

TURNER, HUGUET & BRANS
ATTORNEYS AT LAW
924 MAIN STREET
P. O. BOX 110
MARTINEZ, CALIFORNIA 94553
(415) 228-3433

GORDON B. TURNER
MAURICE E. HUGUET, JR.
KENNETH R. BRANS

September 22, 1987

Diane Griffiths
General Counsel
F.P.P.C.
P. O. Box 807
Sacramento, CA 95804

Re: Request for Conflict of Interest Advice Letter

Dear Ms. Griffiths:

As the Clayton City Attorney I am submitting the following facts at the request of Mayor James Parsons, Clayton City Offices, P. O. Box 280, Clayton, CA 94517, and seeking your advice as to whether he has a potential conflict of interest.

Mayor Parsons is a civil engineer and owner of a 1/3 partnership interest in a general civil engineering firm.

It is contemplated that Mayor Parsons' firm would perform civil engineering services relating to site development, i.e., surface drainage, grading, and utility placement for Pacific Rim, a company planning to purchase and develop property soon to be annexed to the City, which is shown as commercial on the City's General Plan.

The property in question would also be situated within the boundaries of the City's Redevelopment Agency which Mayor Parsons chairs. There are currently no transactions anticipated between Pacific Rim and the Redevelopment Agency.

Pacific Rim will need various specific project approvals from either the City staff or Planning Commission, but in general not from the City Council unless an appeal is taken to that level.

Mayor Parsons' firm will not be involved in the application process for use permits or design review on behalf of Pacific Rim, but will limit its work to the aforementioned site development civil engineering.

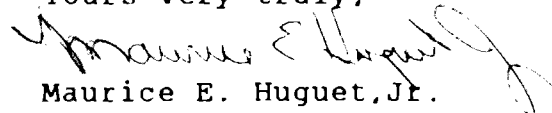
Diane Griffiths
General Counsel
September 22, 1987
Page 2.

Based upon the foregoing facts, would the Mayor have a conflict of interest if Pacific Rim matters should come before the Council, and if so, would his voluntary disqualification in considering such matters be sufficient? Likewise, would he have to disqualify himself from any activities of the Redevelopment Agency pertaining to the Pacific Rim property?

Would the Mayor or his firm be disqualified from representing Pacific Rim, or for that matter, other developers at the staff and planning commission levels only excluding, of course, any appearances before the City Council.

Thank you for your assistance in this matter.

Yours very truly,


Maurice E. Huguet, Jr.

MEH:dg
0856h
cc: Mr. James Parsons



California Fair Political Practices Commission

September 29, 1987

Maurice E. Huguet, Jr.
Turner, Huguet & Brans
P.O. Box 110
Martinez, CA 95443

Re: 87-245

Dear Mr. Huguet:

Your letter requesting advice under the Political Reform Act was received on September 28, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

cc: James Parson, Mayor
City of Clayton